UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE LORAZEPAM & CLORAZEPATE ANTITRUST LITIGATION	**MDL Docket No. 1290 (TFH)** **Misc. No. 99ms276 (TFH)**
This Order applies to: **HEALTH CARE SERVICE CORPORATION, et al.,** **Plaintiffs,** **v.** **MYLAN LABORATORIES, INC., et al.,** **Defendants.**	**Civ. No. 01-2646 (TFH)**

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that Defendants' Motion To Strike Portions of Second Amended Complaint [# 24] is **DENIED**.

SO ORDERED.

October 3rd, 2002

Thomas F. Hogan
Chief Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE LORAZEPAM & CLORAZEPATE ANTITRUST LITIGATION	MDL Docket No. 1290 (TFH) Misc. No. 99ms276 (TFH)
This Order applies to: HEALTH CARE SERVICE CORPORATION, et al., Plaintiffs, v. MYLAN LABORATORIES, INC., et al., Defendants.	Civ. No. 01-2646 (TFH)

MEMORANDUM OPINION

I. INTRODUCTION

Pending before the Court is Defendants' Motion To Strike Portions of Second Amended Complaint [# 24]. Specifically, Defendants move to strike paragraphs 59 through 68 of Plaintiffs' Second Amended Complaint. For the following reasons, the Court denies the Defendants' Motion.

II. DISCUSSION

The Defendants move to strike the above-noted portions of Plaintiffs' Second Amended Complaint, claiming that such "immaterial and impertinent references contained in these ten paragraphs bear no essential or important relationship to Plaintiffs' claims" and are "wholly irrelevant allegations [that] unfairly prejudice Mylan." Def.s' Mot. at 4. For example, paragraph 59 of the Second Amended Complaint alleges that "Arkansas Congressman Marion Berry, a licensed pharmacist, stated that 'I have never seen a price increase list that even comes close to

what this does. It's amazing that a company [Mylan] feels that they have so little competition that they can do something like this and take advantage of our seniors this way.' " Def.'s Mot. at 4–5. Further, defendants claim that "the section entitled 'Litigation Against Defendants' could have no possible relevance to Plaintiffs' claims under the Illinois Antitrust Act" since such allegations attempt to improperly impute liability to Mylan. Id. at 5.

Plaintiffs rejoin by claiming that "paragraphs 59 through 68 of HCSC's Complaint [ ] detail the impact of [Mylan's] pernicious price fixing scheme on consumers — facts which for the essence of this litigation . . . ." Pl.s' Opp. at 3. Further, Plaintiffs argue that "paragraphs 59 through 68 illustrate the impact on consumers and the disruption to the marketplace to which resulted from Defendants' illegal actions and are clearly relevant to this case." Id.

III. LEGAL STANDARD

Motions to strike under Fed. R. Civ. P. 12(f) are drastic actions and are viewed with disfavor. Resolution Trust Corp. v. Gardner, 798 F. Supp. 790, 797 (D.D.C. 1992) (citing Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distrib. Pty., 647 F.2d 200, 201 (D.C. Cir. 1981).

This Court has broad discretion when dealing with motions to strike portions of a pleading. Makuch v. Federal Bureau of Investigation, No. CIV.A.99-1094, 2000 WL 915767, at *1 (D.D.C. Jan. 7, 2000). In exercising this discretion, the Court remains mindful of the following considerations:

> Motions to strike portions of a pleading are generally disfavored. Such motions are disfavored because, so long as the complaint states a claim and is otherwise legally sufficient, the efforts of the parties and the attention of court are better spent on the substantive merits of the action rather than the contents of the pleadings. They are also disfavored "because striking a portion of a pleading is a drastic remedy and because it often is sought by the movant simply as a dilatory tactic...." 5A Wright & Miller § 1380.

> All averments sought to be stricken are taken as admitted for purposes of a motion to strike.

Id. (citations omitted).

The Court is aware that Fed. R. Civ. P. 12(f) does not by its terms *require* that matters be prejudicial to be stricken. Id. at 2. The rule is phrased in the disjunctive, allowing the court to strike "from any pleading ... any redundant, immaterial, impertinent, *or* scandalous matter." Id. (citing Fed. R. Civ. P. 12(f) (emphasis added)). However, "the courts view motions to strike portions of a complaint with such disfavor that many courts will grant such a motion only if the portions sought to be stricken as immaterial are also prejudicial or scandalous." Id.

IV. ANALYSIS

With this review of pertinent law, the Court now turns to the Defendants' Motion to Strike. Similar to the Makuch court's determination, this Court cannot say that the allegations contained in paragraphs 59 through 68 of Plaintiffs' Second Amended Complaint are "immaterial and impertinent" as Defendants claim. Nor does the Court find the allegations to be "prejudicial."[1] Further, while by no means having reached a decision on the merits of this case,

---

[1] The Court finds persuasive guidance from the Second Circuit Court of Appeals:

> In deciding whether to strike a Rule 12(f) motion on the ground that the matter is impertinent and immaterial, it is settled that the motion will be denied, unless it can be shown that no evidence in support of the allegation would be admissible. The Federal Rules of Civil Procedure have long departed from the era when lawyers were bedeviled by intricate pleading rules and when lawsuits were won or lost on the pleadings alone. Thus the courts should not tamper with the pleadings unless there is a strong reason for so doing.

Lipsky v. Commonwealth United Corp., 551 F.2d 887, 893 (2d Cir. 1976) (citations omitted).

If at some later point this case approaches a jury trial on the merits, the Court may revisit this issue of undue prejudice via a motion in limine under Fed. R. Evid. 403. Indeed, if this Court feels that the pleadings in question "are prejudicial, it can direct that they be not read to the jury. The pleadings are not evidence." Sinaiko Bros. Coal & Oil Co. v. Ethyl Gasoline Corp., 2 F.R.D. 305, 306 (S.D.N.Y. 1942).

the Court finds that the paragraphs in question may very well be relevant to Plaintiffs' cause of action.

After analyzing carefully the paragraphs in question and the merits of each parties' competing arguments, the Court here exercises its discretion and declines to strike the portions in question of the Second Amended Complaint.

V. CONCLUSION

For the reasons stated above, the Court will deny Defendants' Motion To Strike Portions of Second Amended Complaint [# 24]. An appropriate Order will accompany this Opinion.

October 3, 2002

Thomas F. Hogan
Chief Judge